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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,342	01/03/2006	Leander Dietzsch	GK-ZEI-3280/500343.20301	1621
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REED SMITH, LLP			EXAMINER	
ATTN: PATENT RECORDS DEPARTMENT			FINEMAN, LEE A	
599 LEXINGTON AVENUE, 29TH FLOOR				
NEW YORK, NY 10022-7650			ART UNIT	PAPER NUMBER
			2872	
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			06/03/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/540,342

**Applicant(s)**

DIETZSCH ET AL.

**Examiner**

LEE FINEMAN

**Art Unit**

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Office Action is in response to an amendment filed 25 February 2008 in which claim 12 was amended. Claims 12-22 are pending.

#### ***Claim Objections***

1. Claims 12-22 are objected to because of the following informalities:

Regarding claim 12, the limitation “a supporting cell” on line 12 is confusing. Is it the same supporting cell as detailed in line 5 or a different one? For the purposes of examination it will be taken to be the same supporting cell. Further, the phrase “preferably” is objected to because it is not clear whether the limitations following the phrase are part of the claimed invention.

The dependent claims inherit the deficiencies of the claims from which they depend. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 12-19, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Etzold, et al., DE 3523902 A1 (henceforth Etzold) in view Hodgson, US 4,299,440.

Regarding claim 12, Etzold discloses a microscope (figs. 2 and 3) comprising: a base body or a stand (figs. 2 and 3) comprising: a first part (11) holding an observation unit (12); and a third part (1, 19) holding a supporting cell (2), a stage support (5); a guide (22) for adjusting the stage support (fig. 3) or an objective changer device with inserted objectives; and a stage (6) for holding the object or specimen; said microscope further comprising: the supporting cell (2) being provided and being connected to the third part (1, 19) of the stand, preferably rigidly but so as to be exchangeable (via 17); and a first assembly (9) being provided for receiving, holding and adjusting the objective and a second assembly (4) being provided for positioning the object or specimen relative to the objective, said first and second assembly being attached to said discloses the claimed invention except for a second part holding an illumination unit and wherein said third part connecting the first and the second. Hodgson teaches a microscope with a base body or stand (fig. 1), including a first part (22) holding an observation unit (38); a second part (74) holding an illumination unit (92, see fig. 8) and a third part (30 and 70), wherein said third part connecting the first and the second (fig. 1). It would have been obvious to one of ordinary skill at the time the invention was made to add a second part holding an illumination unit as taught by Hodgson to the system of Etzold to provide adjustable intensity illumination to the sample (Hodgson, column 3, line 64-column 4, line 10).

Regarding claim 13, Etzold further teaches wherein the supporting cell is rigidly fastened to a plurality of projections (not shown, via 17) of the stand.

Regarding claims 14-15, Etzold further teaches wherein damping and/or vibration-isolation intermediate layers (3) arranged between the supporting cell (2) and the contact

surfaces (17) of the projections of the stand and wherein the supporting cell is arranged in a springing manner (on 3).

Regarding claim 16, Etzold further teaches wherein the first assembly is designed as an objective changer device (7, in at least so far as it is easily removed and replaced with a different objective) or as an objective focusing device.

Regarding claim 17, Etzold further teaches wherein the second assembly comprises a stage support (5), a stage guide (4), and a stage (6).

Regarding claim 18, Etzold further teaches wherein the supporting cell is optimized with respect to rigidity (see at least the abstract), use of material (see at least the abstract), dimensioning (see at least the abstract) and thermal behavior (examiner notes that although Etzold does not specifically address thermal behavior, it is understood that the supporting cell is sufficiently optimized with respect to thermal properties to allow ideal operation) while adhering to requirements for high stability and imaging quality of the microscope.

Regarding claim 19, Etzold discloses the claimed invention except wherein the objective changer device (7) is constructed as an objective turret. Hodgson further teaches in fig. 1 an objective changer device constructed as an objective turret (136). It would have been obvious to one of ordinary skill at the time the invention was made to add to make the objective changer device of Etzold an objective turret as taught by Hodgson to provide a more flexible device with more magnifications quickly available.

Regarding claim 21, Etzold further teaches wherein the stage guide has a guide plate (4) that is fixedly arranged at the supporting cell (2) and guide elements at the stage support (5) which are in an operative connection with the guide plate (fig. 3).

Regarding claim 22, Etzold further teaches wherein the supporting cell comprises a thermally invariant ceramic material, sintered material or other suitable material or a combination of such materials (it is the examiner's position that material forming Etzold's supporting cell qualifies as a "suitable material" as it performs the functions outlined in Etzold).

4. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Etzold in view of Weiss, US 2003/0133190 A1.

Etzold discloses the claimed invention except for a condenser at the stage support. Weiss teaches a condenser (4) arranged at the stage support (1). It would have been obvious to one of ordinary skill in the art at the time of invention was made to modify Etzold's stage to include Weiss's condenser to allow illumination to be provided from beneath the sample as taught by Weiss (paragraph 47).

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 12-22 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

6. It is noted that an English machine translation of Etzold is included with this action.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEE FINEMAN whose telephone number is (571)272-2313. The examiner can normally be reached on Monday - Friday 8:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephone B. Allen can be reached on (571) 272-2434. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lee Fineman/  
Patent Examiner, Art Unit 2872  
28 May 2008